



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



Chief Donald Eunson
c/o William J. Daily, Esq.
Sloane & Walsh
3 Center Plaza
Boston, MA 02108

PUBLIC ENFORCEMENT LETTER 93-1

Dear Chief Eunson:

As you know, the State Ethics Commission has conducted a preliminary inquiry regarding an allegation that, as the Town of Bedford Police Chief, you assisted your son in obtaining a bargain purchase of a police vehicle you were trading in to Natick Auto Sales, Inc. (Natick Ford). The results of our investigation (discussed below) show that the conflict of interest law may have been violated here. In view of certain mitigating circumstances (also discussed below), the Commission, however, does not feel that further proceedings are warranted. Rather, the Commission has determined that the public interest would be better served by bringing to your attention, and to the attention of your colleagues throughout the Commonwealth, the facts revealed by our investigation and by explaining the application of the law to such facts, trusting that this advice will ensure your future understanding of the law. By agreeing to this public letter as a final resolution of this matter, the Commission and you are agreeing that there will be no formal action against you and that you have chosen not to exercise your right to a hearing before the Commission.

I. The Facts

1. At all relevant times, you were the Town of Bedford Police Chief.^{1/} As such you were a “municipal employee” as defined in G.L. c. 268A, §1.

2. The Bedford Police Department (BPD) has a total of seven vehicles: four marked cruisers and three unmarked cars. Typically, the BPD’s vehicles are only kept for two or three years, such that each year the BPD trades in three or four vehicles and purchases the same number of new vehicles.

3. As chief, you have the overall responsibility for these purchases, but, in fact, you have little, if anything to do with the details of the purchases. (As chief, you do sign all the necessary paperwork.) The details of deciding whether three or four cars will be traded in, what accessories will be transferred from old to new vehicles, and what, if any, new accessories will be purchased, are all left to Lt. Jack McGrath, who has worked for the BPD for some 26 years.

4. For the last several years, the BPD has both purchased its new vehicles from, and traded in its old vehicles to, Natick Ford. For several years, Natick Ford has been the winning bidder of the Greater Boston Police Council (GBPC) cooperative purchasing contract. The various towns that are a party to that contract can buy new vehicles, accessories and options at a set price that is very competitive. The contract also provides for set trade-in allowances, although those trade-in prices are subject to the vehicle’s condition and mileage.^{2/}

5. Generally speaking, Lt. McGrath dealt with Clay Chase of Natick Ford. At some point in the late spring of each year, Lt. McGrath would tell Chase how many new vehicles the BPD wanted to purchase. When those vehicles arrived at Natick Ford, Lt. McGrath would decide which accessories would be transferred from the old to the new vehicles and, what, if any, new accessories would be obtained. Lt. McGrath would turn in one used

vehicle to Natick Ford at a time, transfer equipment if necessary to the new vehicle, and bring the new vehicle back to the BPD. This process would continue until all three or four new vehicles were received. Frequently, you, as chief, would accompany Lt. McGrath in turning in the used vehicles and picking up the new ones. On some of those occasions you would see Chase and talk to him. Those discussions were more social than business, however.

At the end of this process, Natick Ford would give Lt. McGrath a final bill which would reflect the net price the BPD owed Natick Ford after trade-in allowances were subtracted. Lt. McGrath would not negotiate regarding those trade-in allowances. According to Lt. McGrath, he took whatever Natick Ford allowed. He was aware that trade-in allowances were set out in the GBPC contract. However, he did not check to see what those prices were. He was not aware that those prices were subject to adjustment depending upon mileage and condition. Neither he nor you were aware that the town could obtain a higher price if a trade-in was in particularly good condition.

6. In the late spring of 1991, the process as just described was followed. Thus, Lt. McGrath placed an order for three new vehicles from Natick Ford. As of approximately June 5, 1991, Lt. McGrath had turned in two used vehicles and picked up two new vehicles.

7. Shortly before June 5, 1991, your son David, who was at the time 29 years old and maintained his own separate residence, informed you that he would like to purchase your former chief's car which was being traded in.^{3/}

At some point shortly before June 5, 1991, you talked with Chase (in person) and asked him whether you could buy back one of the BPD vehicles being traded in. He said that you could, but you would have to make your purchase from Natick Ford's wholesale division. Although your and Chase's memories are vague, your best recollection is that no price was discussed at that time.

8. On June 5, 1991, you, your son David and Lt. McGrath drove together in your police chief's car to Natick Ford. Lt. McGrath turned in that vehicle. Although memories of details are vague, according to David, he asked Chase how much it would cost to buy back your former chief's car. Chase said \$600. There was no negotiating. David agreed to the price, wrote a check for that amount and gave it to Chase.^{4/}

At the same time David was completing his purchase, Lt. McGrath was finalizing the details regarding the town's purchase of the three new vehicles. Thus, Chase gave Lt. McGrath the final bill for the three new vehicles.^{5/} Thereafter, David drove your former chief's car home, and you and Lt. McGrath brought back the remaining new vehicle to the BPD.

9. According to Chase, your former chief's car was in very good shape. The combination of its condition, low mileage, and absence of police markings would have given it a retail value of \$3,000 to \$4,000, even as a former police car. According to Chase, however, Natick Ford does not sell these vehicles to the public. Rather, Natick Ford's practice is to quickly wholesale them, primarily to a company that, in turn, sells them to be used as cabs in New York City. That company looks for cars that have police packages, in particular the heavy suspension and vinyl seats which are prerequisites for them being used as cabs. According to Chase, although your former chief's car would have obtained an attractive price at retail, it was less desirable for Natick Ford's wholesale customers, because it lacked the requisite police package.

According to Chase, the only reason he was willing to sell the car to David was because David was your son. While, generally speaking, Natick Ford will not sell former police vehicles to the public, it will sell them to its client's employees and family members of those employees in order to maintain good customer relations.

Finally, according to Chase, Natick Ford only looks to make \$200 to \$400 in reselling these used police vehicles. When it would resell to a town employee, generally Natick Ford looked to make \$200 over the trade-in allowance. Chase was not able to explain why Natick Ford charged your son only \$100 over the trade-in allowance, although he noted that the \$200 policy was an informal one, and at times they sought only to obtain \$100 over the trade-in allowance. Chase provided us with information regarding four former police vehicles Natick Ford had resold to municipal employees in or about June 1991. That information indicates that in three of those four instances Natick Ford resold the vehicles for \$200 over cost, and in the remaining situation for \$100

over its cost.

10. The other two BPD vehicles traded-in on or about June 5, 1991, were a 1988 LTD cruiser with 93,666 miles and the 1990 LTD already described. These cars were wholesaled by Natick Ford as part of a lot of 23 vehicles for \$34,000. (The price was for the entire lot. There was no individual breakdown.) Of those 23 vehicles, only three were 1989 or 1990 model years. Indeed, 14 of those vehicles were 1987 or older models. In any event, the average wholesale re-sale price of those cars was \$1,478.

11. Under oath, both you and Chase stated that you did not attempt to place any pressure on Chase to give your son any preferential treatment in this sale. Furthermore, according to you and Chase, it has been a common practice for Town of Bedford employees to buy back town vehicles that are traded in to Natick Ford.

12. In the future, the town plans to sell its used vehicles at a public auction.

II. Discussion

As the Town of Bedford Police Chief, you have been a municipal employee for the purposes of the conflict of interest law, G.L. c. 268A. In the Commission's view, the foregoing evidence supports a reasonable cause finding that you violated G.L. c. 268A as follows.

Section 23(b)(2) of G.L. c. 268A prohibits a municipal employee from, knowingly or with reason to know, using or attempting to use his official position to secure for anyone an item of substantial value not otherwise available to similarly situated people. The Commission has made clear that anything worth \$50 or more is an item of substantial value. *Commission Advisory No. 8*. Chase's testimony suggests that Natick Ford generally looked to make a \$200 mark-up on these police trade-ins. Indeed, three out of the four "comparables" showed \$200 mark-ups. Consequently, it would appear that your son received at least a \$100 discount by not having to pay that standard mark-up.

Even if, in fact, Natick Ford had a uniform practice of selling its trade-ins to public employees for \$100 over the trade-in allowance, such sales would appear to involve substantial value in that the general public cannot buy them for those prices. The real value of the cars, as showed by Natick Ford's wholesaling of the 23-car lot in June 1991, is considerably more, on average, than would be reflected by either a \$100 or \$200 mark-up. Indeed, as that lot sale shows, the average per car profit is something more like \$900 than \$100 or \$200.

We also note that as to this particular police car, it was described as being in very good condition. In fact, Chase's opinion was that at retail, even as a used police vehicle, it was worth \$2,000 to \$3,000. Therefore, for all the foregoing reasons, your son does appear to have received "substantial value" in this deal.

The next issue is whether you used or attempted to use your official position to obtain this "substantial value" for your son. There appears to have been no explicit connecting of your official position to the private accommodation. Compare *In re Singleton*, 1990 SEC 476 (fire chief violates §23(b)(2) by telling a builder that certain fire department inspections could take forever, while in the same conversation asking the builder to maintain its business with his son) and *In re Galewski*, 1991 SEC 504, 505 (building inspector knew or should have known that the effect of his conduct — making requests during the course of inspections that a builder sell him a house that he could afford — was to put pressure on the builder to make some sort of unwarranted private accommodation to the inspector). Your situation seems to fall short of the kind of overt pressure exemplified by *Singleton* and *Galewski*.⁶ Nevertheless, the Commission has made clear that a public official may not solicit a vendor of his agency for a private commercial relationship without violating §23(b)(2). See, e.g., *Advisory #1*. This is because such situations are deemed to be inherently exploitable. Moreover, in your situation there was more than just the solicitation *per se* (even if there was no explicit pressure).

Thus, you made the initial inquiry during a visit to Natick Ford while official police business was being transacted. Later, you brought your son to Natick Ford in a police cruiser, and you were at least on the premises, if not actually accompanying your son, when he bought the trade-in, all while Natick Ford was completing its \$45,000 transaction with the BPD. Moreover, it is clear that but for David being your son, Natick Ford would not have sold the car to David. Therefore, under all these circumstances, it seems fairly compelling that you used your position to obtain this accommodation.

Finally, there is no apparent justification for why your son should have been able to purchase such a car when members of the public could not. This is especially so where the purchase appears to have been at a discount. Therefore, the purchase appears to have involved an unwarranted privilege not available to similarly situated individuals. See, *EC-COI-86-14*.^{7/}

In summary, where the sale involved substantial value, where you used your position to effect the sale, and where the value was an unwarranted privilege not available to similarly situated people, there is reasonable cause to believe that you violated §23(b)(2).

Section 23(b)(3) prohibits a municipal employee from knowingly, or with reason to know, causing a reasonable person knowing all of the circumstances to conclude that anyone can unduly enjoy his favor in the performance of his official duties. Where you are responsible for your department's substantial contract with Natick Ford (an average of \$50,000 a year), you should not get involved in seeking any kind of private commercial relationship with that vendor, even if the evidence was fairly convincing that no preferential treatment was provided. See, e.g., *In re Keverian*, 1990 SEC 460 (Speaker of the House violated §23(b)(3) by hiring his State House carpenter to do substantial work on his own residence, although work was paid for at the going rate); *Commission Advisory #1*. Here, the appearance of impropriety is exacerbated by the following factors: (1) you initiated the discussion, (2) you did so in the context of an official business transaction, (3) you accompanied your son and were at least on the premises (when the town's purchase was being completed) when your son made his purchase, (4) there is considerable evidence to suggest that there was a substantial discount, and (5) the general public could not have purchased this car.

III. Disposition

Based on its review of this matter, the Commission has determined that the sending of this letter should be sufficient to ensure your understanding of, and your future compliance with, the conflict of interest law. Although the Commission is authorized to impose a fine of up to \$2,000 for each violation of G.L. c. 268A, the Commission chose to resolve this matter with a public enforcement letter for the following reasons: (1) you do not appear to have attempted to exert any pressure on Natick Ford to provide your son with preferential treatment; and (2) the practice of town employees purchasing used town vehicles when they are traded in by the town appears to be a systemic one, and the Commission has not previously made clear how the conflict of interest law applies in these situations.^{8/} With those factors in mind, the Commission has chosen to resolve your situation with a public enforcement letter in order to communicate a clear message that department heads cannot buy back their agency's trade-ins from vendors with whom they have official dealings.

This matter is now closed.

Date: February 26, 1993

^{1/} Indeed, you have been chief for 33 years.

^{2/} For example, the 1991 contract provided that 1988 LTDs were to receive a trade-in allowance of \$500. By comparison, a 1990 LTD had a trade-in allowance of \$2,300, although an additional \$1,000 could be allowed if the 1990 LTD had less than 60,000 miles.

^{3/} This was a 1988 LTD with 50,438 miles at the time it was traded in. It had air conditioning and a radio. It was in good running condition. It was an unmarked car. It did not have the so called "police package" which includes a heavy duty suspension and vinyl seats. (Rather it had a regular suspension and cloth seats.) You had used this car for approximately one year when it was new. You then handed it down to the lieutenants who used it for a year. Thereafter, until it was traded in, it was used by the detectives. According to you, the mileage on the car did not reflect the numbers of hours on the engine because the lieutenants and detectives would frequently leave the car idling for long periods of time when they were on assignments.

There was testimony that the vehicle bought by your son required a new exhaust system shortly after it was purchased, that the electrical system has been a problem and that the automobile burns oil. Natick Ford sells the vehicles "as is" and the buyer accepts the risk that the vehicle may have problems.

^{4/} The check is actually dated 6/4/91. David attributed that to an error on his part.

^{5/} The final bill was for \$44,190. This was a net bill, although it did not specify how much had been allowed for each trade-in. Chase

informed us, however, that the trade-in allowance for the two 1988 LTDs was \$500 each and the 1990 LTD was \$2,700, the last being \$400 over the GBPC set price. No one could satisfactorily explain why the 1990 LTD, which had only 49,069 miles on it, did not receive the \$1,000 premium established by the GBPC contract. Indeed, no one could recall exactly how that trade-in allowance was determined.

^{6/} Note that *Singleton* and *Galewski* involved disposition agreements in which the subjects paid fines of \$1,000 and \$1,250, respectively.

^{7/} In *EC-COI-86-14*, cited above, dealing with a vendor's offer to sell law enforcement officers new cars at \$100 "over invoice," the Commission stated,

A discount which is available to a discrete public group, such as law enforcement officers, raises a conflict under §23 because the discount is given solely because the recipients are public officials and for no other reason. *See EC-COI-83-4*. There is no statutory authorization or other justification for providing to law enforcement officers a privilege which is not available to private citizens or other public officials. The discount is unwarranted because it is a privilege "not properly available to similarly situated individuals, such as members of private groups and other public employees" [footnote omitted].

^{8/} See, e.g., *In re U.S. Trust*, 1988 SEC 386 (systemic problem with banks wining and dining municipal treasurers); and *In re Whalen*, 1991 SEC 514 ("ticket fixing"), both of which were resolved with public enforcement letters.